Industrial court endorses sacking of Australian miners after union betrayal

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The full bench of the Fair Work Commission (FWC), the federal government's industrial tribunal, last week endorsed the sacking of 83 workers at Anglo-American's German Creek mine near Middlemount in Central Queensland. The dismissals took place in November, amid strike action targeting the mining giant's move to cut wages and conditions via a new Enterprise Bargaining Agreement (EBA).

The ruling is the latest in a series of interventions by the FWC into industrial disputes that underscore its role as an apparatus of the corporate elite. It is the second time that the commission has backed Anglo-American's job cuts at German Creek—the full bench rejected a trade union appeal against the initial decision last November.

In recent decisions, the FWC also backed AGL's moves to slash the wages of 570 workers at the Loy Yang power plant in Victoria's Latrobe Valley, by up to 65 percent. In December, it endorsed 1,600 job cuts by Essential Energy. In other cases, the commission has banned industrial action by energy and other workers.

The plight of the sacked miners, who have been left jobless amid a marked slowdown in the mining sector, is a direct result of the activities of the Construction Forestry Mining and Energy Union (CFMEU). Far from in any way challenging FWC and its repressive powers, the union acts as its policeman in suppressing strike action.

The union did everything it could to isolate workers at the mine after they went on strike on August 19. Despite widespread support for the German Creek miners, the CFMEU blocked any strike action by workers at other mines. Having worn the striking workers down over more than four months, the union ended the industrial action at the beginning of January, without the workers securing any of their demands.

The FWC's re-affirmed decision establishes a precedent for the victimisation of any workers who take industrial or political action against the corporate onslaught on jobs, wages and conditions.

The commission made clear that the "protections" for workers contained in Fair Work Australia laws, introduced by the previous Labor government with the backing of the CFMEU and every other union, are a sham. Under the legislation, it is supposedly illegal for employers to sack workers for taking legally-protected industrial action.

The full bench stated: "Employees who engage in protected industrial action are 'protected' in that their action is not unlawful under the [Fair Work] act and that they are immune from certain civil and criminal liability for engaging in the action."

But this did not mean, the FWC declared, that an "employer of employees who take protected industrial action is not able to respond to protected industrial action, or to circumstances created by such action, in a manner that addresses its legitimate business interests, provided it meets its obligations under the act."

In other words, while certain provisions in the legislation may prevent workers from being jailed, or subjected to massive fines, for taking industrial action during an EBA bargaining period, there is nothing to stop employers from sacking striking workers if it furthers their "business interests."

The company claimed that during the strike it tested new efficiency measures, which caused the retrenchments. The union argued that the German Creek mine was being operated by the same number of employees, but with contractors replacing the striking workers.

The decision was hailed by industry groups and business figures, and prominently reported in the

financial press. Tara Diamond of the Australian Mines and Metals Association declared that "reducing the mine's labour costs was a commercial opportunity identified by the company as a result of the circumstances it was put in by its striking workforce."

The FWC ruling appears to be at odds with a decision by a single Federal Court judge at the beginning of this month to grant interim orders temporarily reinstating two of the sacked miners. The judge declared that the retrenchments were not "bona fide" because they were taken in retaliation for the strike action.

The CFMEU had hailed the Federal Court decision, and used it to bludgeon workers into accepting the end of the strike, without any concessions from the company. Union officials touted future court action as the way forward, with CFMEU district vice president Glenn Powers stating: "Let me tell you this is far from over. We've got all sorts of things going on in the courts."

Powers' comments were in line with the union's attempts to keep workers shackled within the framework of Fair Work's draconian industrial laws.

The sacking of the German Creek miners is part of a sweeping restructure of the mining sector, being assisted by the CFMEU and other unions. At German Creek, Anglo-American is stepping up its use of casual and contract labour as part of a global overhaul of its operations. In 2015, the corporation announced it would sack 85,000 workers around the world and sell-off 60 percent of its mining assets, amid a slump in commodity prices.

The use of contract labor is already widespread in the industry. Contract workers are grossly underpaid and have few rights. Labour hire company, Delta SBD, for instance has reportedly slashed contract wages by 40 percent over the past two years.

Other operators are also carrying out substantial restructures. BHP Billiton is seeking to enforce a three-year wage freeze and sweeping cuts to conditions at its Queensland mines at Peak Downs, Saraji and Goonyella.

The CFMEU has already enforced the destruction of thousands of jobs across the sector. An estimated 4,600 coal jobs have been cut in the Mackay region of Queensland since 2012. Another 5,500 miners have been sacked in neighbouring New South Wales since 2014. Last June, the National Australia Bank predicted that 50,000 more jobs would be axed in the mining and resources sector during the ensuing two years.

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